

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
vs.)
Correctional Officer)
Hernan Mosquera)
Star # 16331)
Docket No. 1871

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on May 22, May 23, July 6, and September 14, 2017, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Hernan Mosquera, hereinafter Respondent, was appointed a Correctional Officer on March 16, 2009. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq.*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, “when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office.” *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) (“A ‘filing’ implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place.” (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 (“A paper is considered filed when it is delivered to the clerk for that purpose.”)).

The original Complaint in this matter was filed with the Merit Board's administrative staff

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on February 3, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on February 3, 2016 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint February 3, 2016. The Sheriff is requesting termination of the Respondent. In the complaint, the Sheriff alleges that the Respondent on May 27, 2014 witnessed the use of excessive force against detainee [REDACTED]. The complaint alleges that the Respondent failed to intervene, failed to immediately notify a supervisor, and failed to file proper written reports regarding the incident and provided false statements regarding the incident.

The complaint alleges violations of Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Sheriff's Order 11.2.20.1, Gen. Order 24.9.1.0, and Merit Board Rules and Regulations Article X, paragraph B.

Detainee [REDACTED] testified he got into a fight with a detainee named [REDACTED] on May 26, 2014. (R. 11) [REDACTED] described the scene of the waiting room at Cermak. (R. 13) [REDACTED] identified where Mr. [REDACTED] was handcuffed to the wall. (R. 13) Mr. [REDACTED] saw two officers strike detainee [REDACTED] in the stomach and chest and went down to his knees. (R. 16) Former Officer [REDACTED] hit detainee [REDACTED] in the face. (R. 17) A white shirt senior officer was standing by while this assault on [REDACTED] took place. (R. 18) There were a bunch of officers there watching. (R. 18) There were at least two officers watching Officer [REDACTED] hit Mr. [REDACTED]. (R. 19) One was a Black officer and one was a Spanish officer. (R. 19) Mr. [REDACTED] identified Officer Hernan Mosquera as one of the officers. (R. 19, 20) The officers were standing watching [REDACTED] punch [REDACTED]. (R. 20) All of the assault on [REDACTED] by [REDACTED] was witnessed by the two other officers. (R. 20) There was a female officer and another white shirt present. (R. 20, 21) The female officer and the white shirt were talking and laughing while [REDACTED] was being assaulted. (R. 21) There was nothing obstructing the view of the white shirt and the other officer. (R. 22) [REDACTED] identified the white shirt as Sergeant [REDACTED]. (R. 22)

[REDACTED] testified she works for the FBI in the Chicago office. (R. 30) Agent [REDACTED] has been with the Bureau for 9 years and was assigned to interview Cook County Correctional Officer [REDACTED] who at the time of the interview had blonde hair. [REDACTED] and Agent [REDACTED] interviewed Officer [REDACTED] at her residence. During the interview she took notes and

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wrote up a summary. (R. 31) Exhibit 3 is a copy of the interview notes for the interview with Officer [REDACTED] (R. 32) It is an account with the interview with Officer [REDACTED] that she conducted with Agent [REDACTED] (R. 32) Subject of the interview was an encounter with inmate [REDACTED] (R. 33) Officer [REDACTED] said she was a few feet away when [REDACTED] cuffed [REDACTED] (R. 34) She said that [REDACTED]'s eye was red and puffy when she saw him. (R. 34) Agent [REDACTED] testified that the officers were attempting to change the cuff from the front to the back of [REDACTED] when he dropped to the floor and was being difficult. (R. 35) Her report indicated that Officer [REDACTED] did not have an obstructed view at any time. (R. 34) Agent [REDACTED] testified that Officer [REDACTED] told them that at no point did [REDACTED] attempt to hit anyone and at no point did anyone hit [REDACTED] (R. 36) [REDACTED] stated she saw [REDACTED] again approximately two hours later and that he did not look any different. (R. 36, 37) Officer [REDACTED] was shown photographs of [REDACTED] after his altercation on the tier and then two photographs after he was cuffed by [REDACTED] and Mosquera. (R. 37) Officer [REDACTED] admitted there was a difference in inmate [REDACTED] in the photographs after he had been cuffed by [REDACTED] and Mosquera, (R. 38) [REDACTED] again stated to Agent [REDACTED] she does not know what happened and did not see any altercation between [REDACTED] and other CCSO officers. (R. 38) At that point, she and her partner gave her a 1001 warning which is a statute that states that lying to a federal law enforcement officer is a criminal offense. (R. 39) They gave this warning to her because the background of the case indicated that she was a witness to the cuffing, was not able to describe the difference in the appearance of [REDACTED] and that was information contradicted other information in the case so they felt it necessary to give her the 1001 warning just in case she had not recalled something accurately. (R. 39) [REDACTED] confirmed the details of the interview contained in Sheriff's Exhibit 3. (R. 40) Agent [REDACTED] does not always issue a 1001 warning but when they believe that the interviewee is being dishonest, they give them the 1001 warning. (R. 43) She believed it was appropriate in this case based on the information the [REDACTED] had prior to the incident with [REDACTED] and the lack of recollection after the incident. (R. 43) Agent [REDACTED] identified Officer [REDACTED] in the proceeding. (R. 52)

[REDACTED] testified he works for the FBI and has for 30 years. He works for the Civil Rights squad. (R. 59) He was assigned to investigate and interview Sgt. [REDACTED] who he identified in the hearing room. (R. 59) Exhibit 4 was identified as the 302 Record of the interview with Sgt. [REDACTED] that Agent [REDACTED] completed. (R. 60, 61) The 302 Form is a reflection of the notes and summary of the interview. (R. 60) Mr. [REDACTED] stated that Sgt. [REDACTED] stated he did not know that an incident had even taken place. (R. 62) [REDACTED] stated that if there was a use of force incident, he is the person that should be notified and all paperwork should be sent to. (R. 64)

Agent [REDACTED] interviewed Respondent Hernan Mosquera on July 22, 2014. (R. 67) Exhibit 5 was marked for identification and is the 302 interview form for Mosquera. (R. 68) Respondent Mosquera testified he knew somewhat about an incident that may have occurred with inmate [REDACTED] and he was shown photographs that he stated looked somewhat familiar. (R. 70) Mosquera stated that inmate [REDACTED] was being disruptive, harassing inmates around him and saying he wanted to shank people. (R. 70) Mosquera related that inmate [REDACTED] was restrained in the front as opposed to the back and that in the evening he was recuffed to his back. (R. 71) Respondent Mosquera stated that after [REDACTED] was behaving aggressively after they cuffed him

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from behind and placed him on a bench. (R. 71) Respondent Mosquera stated that [REDACTED] then threw himself to the floor and he demonstrated for Agent [REDACTED] and his partner. (R. 72) Mosquera stated that [REDACTED] threw himself to the ground face first. (R. 72) Mosquera stated that he and his partner attempted to pull up [REDACTED] from the floor. (R. 73) Respondent Mosquera testified that after [REDACTED] was seated on the bench and after he had thrown himself to the floor, he tightened [REDACTED]'s handcuffs. (R. 74) Mosquera testified that he described [REDACTED] as looking like he had been in a fight and then was shown another photograph of [REDACTED] with a black eye. (R. 75) Mosquera testified that he believed that the first time he saw [REDACTED] he looked like the second photograph with the black eye which was after he returned. (R. 75) Respondent Mosquera stated to Agent [REDACTED] that he had breakfast with Officers [REDACTED], [REDACTED] and [REDACTED] and that this was only the second time they ever had done so and the other time was a week before their interview. (R. 77-78) Mosquera stated that they did not discuss the handcuffing incident at either breakfast. (R. 78) Mosquera showed Agent [REDACTED] and his partner a text from Respondent Mosquera's phone. (R. 78-79)

Supt. [REDACTED] testified he has worked for the Cook County Sheriff's Office for 23 years and is currently superintendent of Division X. (R. 97-98) Supt. [REDACTED] was at Cermak on the night of the incident on May 26, 2014 regarding a separate inmate [REDACTED] who was being released from their custody and being involuntarily admitted to St. Anthony's. (R. 98) During his time at Cermak on May 26th, he had the opportunity to see inmate [REDACTED] (R. 101) [REDACTED] was exiting the emergency room and going into the waiting area. (R. 101) He did not notice any visible injuries to inmate [REDACTED] (R. 101) He later received a phone call from Lt. [REDACTED] concerning allegations that [REDACTED] had been assaulted. (R. 102) He instructed Lt. [REDACTED] to send [REDACTED] back to medical. (R. 103) [REDACTED] was assigned as the sergeant at Cermak and made him the supervisor there. (R. 103) After he learned of the alleged assault, he contacted Sgt. [REDACTED] about the alleged assault and [REDACTED] said there is nothing – nothing happened. (R. 103) He asked him what's going on and [REDACTED] said there is nothing and that was it. (R. 103) He later saw inmate [REDACTED] back in ER after he had returned from Stroger Hospital. (R. 104) He observed injuries to his eye. He had a black eye there was swollen shut. (R. 104) After seeing [REDACTED] he asked to get a meeting with [REDACTED] (R. 104-105) He identified Sgt. [REDACTED] in the hearing room. (R. 105) He talked with inmate [REDACTED] in a private room about the allegations of what happened. (R. 105) [REDACTED] did not enter the room when he met with [REDACTED] (R. 106) [REDACTED]'s first reaction to the meeting was "are you going to kick my ass, too?" (R. 106) He stated that no he is here to ask about what happened. (R. 106) [REDACTED] specifically identified Sgt. [REDACTED] as having been present when he was assaulted. (R. 107) He asked him which sergeant was present and [REDACTED] stated the sergeant that just took me down which was [REDACTED] (R. 107) Exhibit 6 was entered into evidence as a log book of when the inmates come in and out of Cermak. (R. 110-111) [REDACTED] had told Supt. [REDACTED] that there were no cameras in the Cermak area and that Sgt. [REDACTED] had made statement. (R. 113)

Deputy Director [REDACTED] testified he is an employee of the Cook County Sheriff's Office for the last 22 years and his current title is Director Department of Investigations which investigates all activities, court services and outside on the street. (R. 139) He had been working with the Office of Professional Review in the summer of 2014 and had previously been an

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investigator with OPR. (R. 140) He was assigned to interview the detainee that was alleged to have been assaulted by officers at Cermak Hospital on May 26th and 27th. (R. 140) He interviewed inmate [REDACTED] at Stroger Hospital with his partner. (R. 141) [REDACTED] alleged that while he was at Cermak he got into with correctional staff and ultimately he was slammed to the floor and either punched or kicked in the face and then hogtied to a bench. (R. 141) He photographed [REDACTED] at that time which are marked as Sheriff's Exhibits 7A through 7I. (R. 141) Photographs depict injuries to his eye and to the back of detainee [REDACTED] which looks like a foot print or a shoe print. (R. 142-143) Additional photographs show an injury that appears to be caused by a boot or a shoe. (R. 143) Additional injuries appear to be on detainee [REDACTED]'s armpit. (R. 143) He has been involved in more than 50 investigations regarding excessive force during his time with Cook County Sheriff's Department. (R. 143) He has seen injuries and bruises in the armpit area numerous times. Injuries are typically caused from the pulling up of the arms from either a prone position or laying down position. (R. 145) This usually occurs while a detainee is handcuffed. (R. 145) Additional photos show scratch marks on detainee's arm in the bicep area. Additional scratches underneath his ear and bleeding down to the right side of his neck. (R. 146) He attempted to get the use of force packet and get statements and written responses but there were no written reports regarding this incident. (R. 146) Use of force reports are required in a situation like this. (R. 147) General Orders 11.2.1.0, 11.2.2.0 are required in this situation. (R. 147) The rules require each correctional officer staff who witnesses the use of force and to file a statement with their supervisor. (R. 147) No witness statements were completed by correctional staff regarding the use of force on detainee [REDACTED] in Cermak late in the evening of May 26, 2014 and continued into the early moments of May 27, 2014. (R. 147) He attempted to determine who was present at the incident and interviewed witnesses. (R. 147) He interviewed detainee [REDACTED] on May 29, 2014. (R. 148) He provided a photo lineup of people who may have been present at the incident for [REDACTED] to review. (R. 148) His procedural was to go through the employee data base and identify photos as close to the subject under an investigation by them to the witness. (R. 149) One of the six subjects in the photo panel was former Correctional Officer [REDACTED]. (R. 149) [REDACTED] identified Correctional Officer [REDACTED] as being involved in the incident. (R. 150) In the second lineup of photo panel, [REDACTED] identified Respondent Hernan Mosquera as being involved in the incident. (R. 152) In the third lineup panel of photos, he identified Sgt. [REDACTED]. (R. 153) In the next panel, he identified Correctional Officer [REDACTED]. (R. 154) He identified a female officer that was inside the room at the time that he was struck. (R. 155) Each of these identifications took less than a couple of minutes. (R. 150-155) [REDACTED] identified Officer [REDACTED] as the one who caused the injuries. (R. 156) He identified Officer [REDACTED] as the one who was circled by [REDACTED] in the photo panel that he conducted on May 29th. (R. 157) He has conducted over 1,500 to 2,000 criminal investigations for OPR. (R. 159) He interviewed numerous inmates and staff that were in or near the area where the assault took place. (R. 160) To prepare the photo panel for the identification process, he goes to the employee data base and tries to find photos of other employees that are as similar as possible to those of the accused. (R. 173) When he showed the photo arrays to [REDACTED] he did not identify any of the accused officers by name. [REDACTED] just picked them out by the photos. (R. 194) He states that [REDACTED] did identify multiple officers were present in his statements specifically Exhibit K2. (R. 196) The inmates at Cook County Jail do not wear boots. (R. 197) They all wear some sort of "sandal" which is soft-soled. (R. 197) Exhibit 7B through E were a boot mark. (R. 197-198) He believed the injury to

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his back was that of a boot print. (R. 198) Inmates do not wear boots and officers do wear boots. (R. 198) Sergeants, lieutenants and correctional staff all wear boots. (R. 199) Sheriff's Group Exhibit 7. The photos were moved into evidence. (R. 210) Those pictures were taken by investigator [REDACTED] (R. 211) Photos of injuries to [REDACTED]'s arms and wrists were admitted through Exhibit 8. (R. 213)

Correctional Officer [REDACTED] testified he has been with the Cook County Sheriff's Office for 4 years. (R. 229) He works the 3 – 11 shift and did on May 26, 2014. (R. 229) He worked overtime on that shift on May 26, 2014 due to staff shortage and he was present after 11:00 pm on May 26, 2014. (R. 230) He encountered a Sergeant down at Cermak when he was watching inmates who had gotten into a fight. (R. 232-233) At the hearing, Officer [REDACTED] identified Sgt. [REDACTED] as the person he saw at Cermak on May 26, 2014. (R. 233) Officer [REDACTED] saw inmate [REDACTED] down in Cermak basement on May 26, 2014. (R. 235) [REDACTED] was approximately 6 – 10 feet away from him and he identified him. (R. 236) Officer [REDACTED] identified where each person was located in Sheriff's Exhibit 10. (R. 241) He then identified where the Sergeant was located and marked it with an SGT on Exhibit 10. (R. 243) His view was unobstructed as was the Sergeant's view of inmate [REDACTED]. (R. 244) He witnessed the altercation between at least 3 to 4 officers and [REDACTED] when they took him to the ground and then hogtied him to the bench. (R. 245-247) He offered to be a witness to the Sergeant and asked him if he wanted him to write something up. (R. 252) The Sergeant told him he did not want him to write up a witness statement regarding what he saw involving [REDACTED], the threats and the takedown. (R. 253) He knew he was talking to a Sergeant based on the chevrons on the uniforms. (R. 254) Sergeant [REDACTED] stood at the hearing and Officer [REDACTED] identified him as the sergeant he spoke to on May 26, 2014. (R. 256) Officer [REDACTED] viewed a use of force by officers on May 26, 2014. (R. 257) Officer [REDACTED] testified there was a female officer present at the time of the takedown and when he saw Sergeant [REDACTED]. (R. 277) The female officer he saw on May 26, 2014 had blonde hair. (R. 278)

Sergeant [REDACTED] has worked for the Cook County Sheriff's Department for 17 years and is currently assigned the 7 – 3 shift in Division 2. (R. 280) Sergeant [REDACTED] responded to the fight that [REDACTED] was involved in on May 26, 2014. (R. 281) He reviewed the incident report that was drafted by the officer. (R. 281) Sheriff's Exhibit 12 is the incident report regarding the fight. (R. 282) Detainee [REDACTED] was videoed after the incident out in the hallway after he handcuffed. (R. 283) Exhibit 13 is the interview of detainee [REDACTED] was played. (R. 284) Sergeant [REDACTED] had an opportunity to [REDACTED] again after he came back from Cermak. (R. 297) Sergeant [REDACTED] identified and noticed injuries that he did not have when he left the tier. (R. 287) The second incident report marked as Sheriff's Exhibit 14 was entered into evidence identifying a second incident regarding the injuries that they saw. (R. 288) [REDACTED] was again interviewed by Sergeant [REDACTED] and Lt. [REDACTED] regarding his additional injuries. (R. 289) He did not allow inmate [REDACTED] to go back to the tier and send him to the hospital. (R. 290) During the first interview with [REDACTED] prior to the incident in question, he stated he had no injuries and from Sergeant [REDACTED] visual he did not notice any. (R. 298) Sergeant [REDACTED] noticed a difference on the right side of [REDACTED] face between the first video and the second one. (R. 302) Sergeant [REDACTED] testified to the movement logs that his division keeps and it tracks

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specifically the movements of detainee [REDACTED] from the tier to Cermak back to the tier to Stroger Hospital. (R. 318-325)

Investigator [REDACTED] works for the Office of Professional Review of the Cook County's Sheriff's Department and has since 2013. (R. 337) She was trained through Internal Affairs investigating training Cook County Sheriff's Office Recruit Training and the John Reed Interviews and Interrogation Training. (R. 337) She is assigned to Squad 3 which investigates allegations of excessive force, failure to provide medical and failure to protect for the Department of Corrections. (R. 338) Her investigations started as an investigation into the administrative portion of a criminal case that was against Officer [REDACTED]. Sergeant [REDACTED] was the sergeant for shift 1 starting at 11:00 pm on May 26, 2014. (R. 343-344) Her investigation revealed that he was the only sergeant assigned to Cermak during that shift. (R. 343) Investigator [REDACTED] took a statement during her OPR investigation of [REDACTED] in which she said that detainee [REDACTED] was acting like a child and threw himself to the floor. (R. 349) Investigator [REDACTED] report of her interview with [REDACTED] says she did not fill out any use of force paperwork because she did not witness a use of force. (R. 350) [REDACTED] statement to Investigator [REDACTED] was different than her statement to the FBI regarding her not being blocked and being able to see [REDACTED] (R. 351) [REDACTED] stated in her interview with Investigator [REDACTED] that [REDACTED]'s eye was red and puffy when he came to Cermak. (R. 351) [REDACTED] did not see any new injuries on inmate [REDACTED] when he left Cermak. (R. 351) [REDACTED] stated to Investigator [REDACTED] that when [REDACTED] came back to Cermak a second time he looked different than when he first came there. The same eye was swollen that was puffy and red before. She did not see any scratches, lacerations. (R. 352) [REDACTED] identified Sergeant [REDACTED] as being present at that time. (R. 352) [REDACTED] put in her statement to Investigator [REDACTED] that she was friends with some of the other officers involved in the incident but they never talked about the incident prior to their interviews. She reported that the FBI was at her home and that she tried to contact one of the other officers but only to check to see if they were ok not to discuss the incident. (R. 354) [REDACTED] statement to Investigator [REDACTED] Exhibit 20, was moved into evidence. (R. 355) Sheriff's Exhibit 21 is the statement of Hernan Mosquera. Respondent Mosquera reported to Investigator [REDACTED] that he saw [REDACTED] when he came to Cermak and he saw bruises on the detainee's face and saw no other visible injuries. (R. 358) Mosquera stated that when detainee [REDACTED]'s cuffs were being moved from the front to the back, he threw himself face first to the ground and tried to unlock his cuffs. (R. 359) Respondent Mosquera reported he did not see a fight between detainee [REDACTED] and CO [REDACTED] or see [REDACTED] punch detainee [REDACTED] (R. 359) Mosquera testified that he turned his back away from detainee [REDACTED] and Officer [REDACTED] because he thought he had it under control which Investigator [REDACTED] found to be a violation if in fact it occurred. (R. 360-361) Respondent Mosquera reported that he did not hang out with CO [REDACTED] CO Donnis or CO [REDACTED] That they text once in a while but are not close. (R. 361) During his second interview, Respondent Mosquera made a clarification stating he had breakfast with CO [REDACTED] and CO [REDACTED] on the day of the FBI interview and had breakfast with them on one other occasion and invited [REDACTED] to his kid's birthday party at a bowling alley. (R. 362) Respondent stated he did not discuss the incident involving [REDACTED] with any of the officers. (R. 362) Exhibit 21, the statement of Respondent Mosquera was moved into evidence. (R. 363) Mosquera reported to Investigator [REDACTED] he heard [REDACTED] and detainee [REDACTED] That there was commotion between them and that

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[REDACTED] had moved his arm away to avoid being cuffed and swore at [REDACTED] (R. 363) Investigator [REDACTED] took this to be an untruthful statement based on the training that the officers receive. (R. 363) Sergeant [REDACTED] was interviewed by Investigator [REDACTED] on August 28, 2015. (R. 364) Sergeant [REDACTED] confirmed to Investigator [REDACTED] that he was the sergeant on duty both when [REDACTED] arrived at Cermak and when he went back to Cermak afterwards on May 26, 2014. (R. 368) Sergeant [REDACTED] reported he did not see Respondent Mosquera or [REDACTED] use unreasonable force against detainee [REDACTED] (R. 368) Sergeant [REDACTED] reported to Investigator [REDACTED] that he reviewed the video and [REDACTED] showed both sides of his face and had no injuries before he was sent to Cermak. (R. 369) He stated he did not know how [REDACTED] was injured. (R. 370) Sergeant [REDACTED] did not report in his statement that Supt. [REDACTED] asked him to bring inmate [REDACTED] to him in a private room in Cermak late in the evening of May 26, 2014. (R. 370) Investigator [REDACTED] reported that no use of force reports or witness statements were submitted by any correctional staff, sergeants or officers concerning the incident with detainee [REDACTED] at Cermak late in evening hour of May 26, 2014. (R. 371) Investigator [REDACTED] reported that she does not believe Sergeant [REDACTED] recommended any discipline for any of the officers on his shift on the night in question. (R. 374) Investigator [REDACTED] did not become aware of any inconsistencies in inmate [REDACTED]'s statements about whether there was a sergeant present. (R. 378) Investigator [REDACTED] reports that detainees [REDACTED] and [REDACTED] left Cermak at the same time according to the log books. (R. 418-419) Further detainee [REDACTED] left Cermak at approximately 11:45 pm. (R. 419) The only defendant in the civil lawsuit filed by [REDACTED] was Tom Dart. He did not name any of the officers involved. (R. 419)

[REDACTED] testified he had an altercation with a fellow inmate [REDACTED] in Division 2 on May 26, 2014. (R. 430-431) After the altercation, the officers took him to the healthcare unit to see if he had any injuries. (R. 432) He did not have any injuries from the fight with [REDACTED] (R. 433) At Cermak Healthcare he was separated from [REDACTED] (R. 433) He was handcuffed in the front to the bench that he was sitting on. (R. 434) After he returned from Stroger Hospital after the incident, he met with Investigator [REDACTED] and identified the Respondents as being present during the altercation. (R. 436) Officer [REDACTED] told him to sit the fuck down and got into an altercation. (R. 438) Officer [REDACTED] tried to choke him and other officers came in to assist while he resisted. (R. 438-439) He identified Officer Mosquera has being present and assisting. (R. 440) Sgt. [REDACTED] was present while Mosquera and [REDACTED] were trying to throw him to the floor. (R. 440) [REDACTED] identified Officer [REDACTED] in the photo array. (R. 441) Officer [REDACTED] assisted in attempting to throw him to the ground. (R. 441) Officer [REDACTED] smacked him on the left side of his face. (R. 442) He was kicked in the back as he was trying to get away when they lifted him up and he got struck in his right eye. (R. 442) Officer [REDACTED] was the one who punched him in the face. (R. 442) Officer [REDACTED] was identified in the photo array. (R. 442) He identified the white shirt as Sgt. [REDACTED] during the photo array. (R. 444) [REDACTED] was right in the area where he was being attacked and had no obstruction of viewing him from approximately 15 – 20 feet. (R. 444-445) He was told and he believes there were no cameras at Cermak. (R. 446) After the incident he was hogtied to the bench. Hogtied means having your hands handcuffed behind your back and your legs cuffed under the bench. (R. 449-450) After the incident, he saw a doctor and was taken to Stroger Hospital. (R. 451) After the incident, he was again recorded by Sgt. [REDACTED] showing the injuries. (R. 451) He was

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bleeding through his nose, his right eye was closed from swelling. (R. 452) He suffered a concussion, fractured right eye socket of the orbital wall. (R. 452) Sgt. [REDACTED] escorted him to his meeting with Supt. [REDACTED] (R. 453) During his interview with Supt. [REDACTED] he identified Sgt. [REDACTED] as being present and watching the beating. (R. 453)

Correctional Sergeant [REDACTED] has been with the Cook County Sheriff's Office since March 1999 and became a sergeant in 2003. (R. 476-477) Sergeant [REDACTED] was not working at Cermak on May 27, 2014. (R. 486)

[REDACTED] testified she was working in Cermak on May 27, 2014. (R. 489) [REDACTED] said that she goes over to the men's side to help them when they are doing their count for cuffs and work together to get the counts when everyone's name is called off. (R. 493) [REDACTED] came in contact with [REDACTED] and stated that she believed his eye was red and puffy but she did not know which side. (R. 500) [REDACTED] states that Respondent Mosquera was with Officer [REDACTED] when he approached [REDACTED] and changed his handcuffs. (R. 508) She witnessed Respondent Mosquera and Officer [REDACTED] pick up [REDACTED] and put him on the bench. (R. 510) [REDACTED] saw detainee [REDACTED] about two to three hours later. (R. 515) When detainee [REDACTED] came back [REDACTED] describes his eye as bruised and really puffy. (R. 516) He looked different than he did before. (R. 516) On the morning of the FBI interviews, [REDACTED] had breakfast with the others involved in this incident after work. (R. 529) [REDACTED] admits that she was the only female officer down in Cermak on the night in question. (R. 539) [REDACTED] said that Respondent Sergeant [REDACTED] was the Watch Commander. (R. 539) She was in the ER door with open sight to both Officer [REDACTED] and detainee [REDACTED] when the cuffs were being changed. (R. 544) She was close enough and observation enough to hear Officer [REDACTED] yell don't bite during the interaction between him and detainee [REDACTED]. (R. 545) [REDACTED] said that if she sees an officer use force that she has a duty to fill out a witness statement. (R. 547) [REDACTED] said that no one from the Sheriff's Office instructed her that she had to speak with the FBI when they requested an interview. (R. 555-556) [REDACTED] did not want her statement to OPR to be recorded and she signed documents to that effect. (R. 560) She was moved to Division 5 with all of the other officers involved in the incident and that she is friends with them. (R. 563) She admits to texting up Respondent Mosquera on the day of the FBI interviews asking him if he was okay. (R. 564) [REDACTED] states that [REDACTED] dropped himself to the ground when [REDACTED] approached him to change his cuffs. (R. 506) [REDACTED] denies that she saw anybody punch, grab, jerk or kick detainee [REDACTED]. (R. 510) [REDACTED] testified that she did not have any interaction with detainee [REDACTED] or with [REDACTED] and Respondent Mosquera regarding when he was being recuffed. [REDACTED] denies slapping or touching detainee [REDACTED] on May 27, 2014. (R. 518) [REDACTED] states that they did not talk about the FBI interviews. (R. 529)

Respondent Hernan Mosquera has been with the Cook County Sheriff's Department since March 2009, all DOC. (R. 575) Mosquera states he was working the 11 to 7 shift at Cermak on May 27, 2014. Mosquera states that detainee [REDACTED] had scratches and red markings like he was in a fight when he first came to Cermak. (R. 580) Respondent Mosquera states he did

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not hit, kick or see anybody hit or kick detainee [REDACTED] (R. 599-600) Mosquera confirms that [REDACTED] was standing in the doorway with a view of the incident. (R. 609) Mosquera confirms that detainee [REDACTED] came back to the Cermak Hospital approximately two hours later with a sergeant. (R. 611-612) Mosquera said he went out to lunch with several of the other officers involved in the incident. (R. 627-628) Mosquera states that his testimony to OPR was incorrect when he said the inmate had bruises but that he really only had scratches. (R. 634) Respondent Mosquera said that if he witnesses a use of force he is required to fill out a witness statement. (R. 637) Mosquera stated that if he sees an excessive force he is required to write up an incident report. (R. 637) Mosquera said that Officer [REDACTED]'s job duty did not include dealing with the detainees in the staging area and instead his job was just in the ER to protect the medical staff. (R. 642) Mosquera stated that he was not threatened by detainee [REDACTED] even after all of his behavior, verbal comments. (R. 643) Mosquera states that when detainee [REDACTED] threw himself to the floor he landed on his stomach not on his face. (R. 644) Respondent Mosquera said that he spoke with the FBI voluntarily. (R. 653) Mosquera said that he told the FBI that when he first saw him in the ER he already had a black eye. (R. 654) Mosquera said that he told OPR that detainee [REDACTED] was threatening other detainees as well as other officers including himself. (R. 659) Respondent Mosquera told OPR that [REDACTED] came to help him switch detainee [REDACTED]'s cuffs to the back. (R. 660-661) Mosquera states that he did see Sergeant [REDACTED] in the building on May 27, 2014. (R. 662) Respondent Mosquera testified that Officer [REDACTED] comes over without saying a word and begins to uncuff the detainee [REDACTED] and at that point he throws himself to the floor. (R. 598) Respondent Mosquera says he did not see [REDACTED] strike detainee [REDACTED] (R. 599) Mosquera stated that [REDACTED]'s face was not any different than when he first saw him and that he was not complaining of any pain. (R. 608) Mosquera states that his report to the FBI contained a typo and that he actually loosened the cuffs of detainee [REDACTED] and did not tighten them. (R. 619) Mosquera denies that he told the FBI that he never saw detainee [REDACTED] without a black eye. (R. 656)

Sgt. [REDACTED] testified he had been employed since 2007 with the Cook County Sheriff's Office. (R. 667) [REDACTED] stated he was working the 11 to 7 shift on May 27, 2014. (R. 669) He was the only sergeant working that shift. (R. 669) Sergeant [REDACTED] said that he was moved to Division 5 directly after this incident and continued to maintain he knew nothing about it. (R. 681) Sergeant [REDACTED] confirms the testimony of inmate [REDACTED] that states that Sergeant [REDACTED] brought [REDACTED] to Supt. [REDACTED] later when he returned from Stroger Hospital. (R. 687) Sergeant [REDACTED] stated that when he escorted detainee [REDACTED] to meet with Supt. [REDACTED] he had a black eye. (R. 689) Sergeant [REDACTED] admits that if he is made aware of or witnesses a use of force he is required to fill out a witness statement or an incident report. (R. 690) Sergeant [REDACTED] said that he had a discussion with Paramedic [REDACTED] regarding a detainee that turned out to be [REDACTED] that he needed to go back to Medical because he was involved in an earlier fight. (R. 694) Sergeant [REDACTED] admits seeing all of the officers charged including [REDACTED] Mosquera and [REDACTED] on the day of the occurrence in the basement of Cermak on May 27, 2014. (R. 697) Sergeant [REDACTED] admits that no one from the Sheriff's Office or OPR told him he must speak with the FBI. (R. 700) Sergeant [REDACTED] stated he was

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not present during the incident with detainee [REDACTED] (R. 679) Sergeant [REDACTED] says he was never provided any information regarding the incident. (R. 679) Sergeant [REDACTED] denies that Supt. [REDACTED] told him that a guy had been beaten up at Cermak on May 27, 2014. (R. 699)

Conclusion

Based upon the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that the Respondent did violate Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Sheriff's Order 11.2.20.1, Gen. Order 24.9.1.0, and Merit Board Rules and Regulations Article X, paragraph B.

The evidence shows that Respondent violated the orders and rules and regulations as charged. All of the evidence, including video evidence, supports the facts that the Respondent witnessed the use of excessive force against detainee [REDACTED] failed to intervene, failed to immediately notify a supervisor, and failed to file proper written reports regarding the incident, and provided false statements regarding the incident. The actions of the Respondent were outside the parameters of the Sheriff's orders and the regulations governing conduct of employees such as the Respondent.

Order

Wherefore, based on the foregoing, it is hereby ordered that the Merit Board finds Respondent Hernan Mosquera did violate the orders and rules and regulations as charged and is separated from service effective February 3, 2016.

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[REDACTED]
James P. Nally, Chairman

[REDACTED]
John D'Alicandro, Secretary

[REDACTED]
Vincent T. Winters, Board Member

[REDACTED]
Patrick M. Brady, Board Member

[REDACTED]
Byron Brazier, Vice-Chairman

[REDACTED]
Kim R. Wilup, Board Member

[REDACTED]
Juan L. Baltierres, Board Member

[REDACTED]
Kimberly Pate Godden, Board Member

Date July 10, 2019